



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

ADMINISTRATION OF CRIMINAL LAW—THIRD DEGREE SYSTEM

BY GENERAL THEODORE A. BINGHAM,
Ex-Police Commissioner, New York City.

The main topic of discussion for this fourteenth annual meeting of the American Academy of Political and Social Science, viz.: "The Administration of Justice in the United States," has attracted the attention even of the President of the United States, who has publicly said that improvement was necessary. From so accomplished a lawyer and able a judge, such a statement establishes the fact that such improvement *is* necessary, and that a very widespread movement among the people, of dissatisfaction at present conditions is not without good cause. It is commonly acknowledged that we have a vast deal of unnecessary and altogether too much legislation. For this, however, the people have only themselves to blame. It is by them that legislators are elected, and if the people will not elect sensible and able representatives, they must suffer for it.

But taking the laws as they stand, the administration of *justice* must depend upon the judges. For judges to complain, as some have, of a growing disrespect among the people for the law, and an occasional expression of distrust of the courts, is weak and childish; for if the courts prove themselves worthy of respect by the people they will never fail of it. No honest, able judge ever yet failed to command the respect of his profession and of the people at large.

It is the existence of weak or corrupt judges that has given rise to criticism of the judiciary in the first place. But it is with the judiciary itself that rests the burden of obtaining and holding the respect of the people, by deserving it.

Therefore, among defects in present criminal administration I rank first the low grade of the average police magistrate and of the judges of the lower civil courts. These are the courts of first instance, and could be more beneficial than any other to our whole future as a people, if properly manned. It is where our wisest, ablest and most common-sense judges should be—because the police

court and the lower civil courts are closest to the people—to their petty faults and troubles, to the events of their daily lives, to their joys when on a spree and their sorrows afterward. Moreover, it is in the police court and in the lower civil courts that the millions of ignorant foreigners gain their first and, for the most part, only impressions of our government and our boasted liberty. As it is, they get the worst impressions instead of the best.

Honest, able judges in our lowest courts would put a stop to more than half of the troubles we have with policemen everywhere, and would set a high tone at once for the relations between police and public, which we must grudgingly admit could be greatly improved. The right kind of judges in the lower courts, as well as those above could do away almost entirely with shyster lawyers, the whole silly mass of trivial technicalities, the whole outrageous system of pre-arranged postponements of trial, releases on bail, etc., and secure an increase of righteous judgments—an increase in *justice*.

This brings me to a defect of the legal profession which is very general and probably too common to us all; namely, the exaggeration by the individual of his own insignificant and selfish interests.

Legal men, like some other professional men, say physicians, for instance, fall into the habit of making a mystery of their profession. They wind a mysterious cloak about themselves called legal or professional etiquette; which, at times, seriously interferes with the administration of justice. I have known men worried into their graves because of delays due to this cause alone. I have known men die while doctors were fussing over their own whims.

Another large part of legal mystery is made up of the marionette juggling of technicalities and precedents.

Some technicalities *are* important and some precedents are worth being followed more than once; although a man who cannot make up his mind on the facts of a case, and guided by law, without finding a precedent is, in other walks of life, regarded as weak or cowardly.

The practice of the English criminal courts in sweeping aside technicalities, and in getting at the merits of the case, ought to be followed by us. There has recently been a very encouraging case of this sort in Oklahoma. To get at the merits of a case is the last thing the public find in the courts. The legal profession as a whole makes an imaginary deity of "The Theoretical Law," and seems to

forget that it is but a paper image. That it exists for the people, and not the people for it, and that it was created to ascertain the merits of a case, not for the polemical gymnastics of legal hierophants who live by the ceremonials of their self-invented idol.

Another defect in the criminal laws is the almost unintelligible language in which they are written—which is the very fruitful ground of a large part of our troubles. Here again we meet the ghosts and witches, the dust and cobwebs of antiquity—all sacredly kept and worshipped by the modern priests of the cult—who worship the idol, but utterly fail in the great idea which the idol merely figures and figures but imperfectly.

The Ten Commandments cannot be improved on for conciseness, and the people who re-enact these and make other laws are entitled to understand them.

How our poor people let themselves be fooled!

How can they endure the present legal tomfoolery!

Laws are now so obscurely drawn, and often by intention, that much time of the courts is spent in trying to find out what the wording does mean, or in devising a meaning which may be taken to fit the words as nearly as possible.

Simple, clear, forceful language in the laws would enormously reduce not only the labors of the courts, but the present possibilities of trickery in litigation. But I have been asked to discuss particularly the so-called third degree from a police standpoint.

There is a notion in some quarters that this is a mysterious, carefully concealed, dreadful method of torture, like some forgotten device of the Inquisition. This idea has been nourished and spread and exaggerated by the newspapers. So far as New York is concerned, it is an entirely false idea. The third degree is neither more nor less than a severe cross-examination—not under oath—and in no respect worse than many of those grilling cross-examinations to which witnesses, on oath, are subjected by lawyers in open court—to which no objection has yet been raised. Whatever the so-called third degree may have been in the past, there is not in my knowledge or belief any physical feature of blows or pain, and still less of torture connected with it. The object is to find out the truth about the case, get the truth as to facts, or accomplices, or where stolen goods are, or any other facts necessary to society in the administration of justice.

Let me emphasize here my belief that the New York police are not as a body a brutal or unsympathetic body of men. They are very human, and certainly the Celts among them are very sympathetic.

No doubt most of them are somewhat rough and compelled to be so by their work—and they are not intended to be philanthropists. No doubt there are brutal men on the force, but I have seen too much of their general good treatment of prisoners, of generosity to them out of the policeman's own pocket, of restraint and self-control under exasperating circumstances, to give credence to any tales of torture, and rarely do I believe in tales of unnecessary clubbing. I know our men too well, and believe conditions are steadily improving. This is really all I can tell about the third degree, for it is all there is to it.

But what I have said leads directly to the following, about which I am very earnest, and which I wish words of mine could make sink into your minds as a permanent influence. In our liberty of thought, of which we are so proud, nothing is too deep or too shallow for us to discuss. Whether we are at all fitted by experience or education to form any opinion at all, cuts no figure. We run after anything new—as a people we are becoming very mercurial—perhaps it is the natural evolution of a democracy.

Anything like what the papers call “the human element” moves the crowd—sometimes to anger, sometimes to sentiment—and mob instincts are always primitive.

One of the latest fads is that crime is a physical defect and can be reduced by surgery. If so, the surgery would have to be widespread and continuous. By the way, are you aware that a very large percentage of present-day physical defects among children are due to the social evil, and in circles, too, where it would be unpardonable even to mention such an evil? As a people, we are too hypocritical to face cold facts.

But while perhaps many crimes are of the head, most are of the heart, and those who have had experience with crime, and, therefore, are qualified to speak, know of the vast cloud of mere wickedness that prevails—simple cussedness. There *is* an old Adam—there is some kind of a devil—and only when the human *heart* is converted will you have a sure reduction in crime. What has the Church to say about this? Society, or the general community, being merely

human, cannot wait for the surgeons or the Church, but, on the principle of the greatest good to the greatest number, has taken steps to protect itself and must continue to do so—has been compelled to do so in all ages or be swamped by anarchy.

Shall society be protected in its liberties, its lives, its property; yes, even in its general business and social morality? Or shall it become the victim of an hysterical, maudlin flabbiness, mistakenly called mercy; which is, after all, a “fad,” not a virtue. If society is to be protected, and real progress made, force must be used against the very real and active simple wickedness of this selfish world.

Taine, in his “History of the French Revolution,” tells you that one of the causes of the French Revolution was the high degree of refinement and moderation reached by the French people—so gentle had they become that the judges shrank from harsh measures and were always hopefully good natured. There was a horror of severity and bloodshed. A reading of his book will astonish you at the similarity between conditions in France before the Revolution and conditions in our own country at the present time. About one hundred chief scoundrels carried France down from its pedestal among the nations.

Let us face the facts honestly and fearlessly. Society, in a thousand years, has learned that it must protect itself by force. The police are the guardians of civilization and of progress. They are and must be an instrument of force, not of philanthropy or polite persuasion; and they must be backed up by society at its peril. True, the police must be wisely used, and that is why no selfish politics should control them, and why discipline should be rigidly enforced. But for a spirit of maudlin and false sympathy to join hands with the howls of criminals for mercy is fatal; is itself criminal, for it is treason to the general good.

I should think these remarks would be of peculiar interest to you in the light of recent events, as well as the fact of what rigid discipline and honest administration can accomplish, even in a small body of men. To obtain the results you seek, to obtain justice, let the laws even as they stand be enforced; let the judges show themselves strong, and fearless for the *public* good, and utterly immovable by anything but the merits of each case brought before them, guided not by the hair-splitting of the lawyers, not by a presumptuous spirit of legislating to suit their own ideas, but by the evident intention of the law as it is.